



W.P.No.23697 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.23697 of 2011

and

M.P.No.1 of 2011

Magnum Clothing (P) Ltd.,
represented by its
The Managing Director,
No.1A, Dr.Sadhasivam Road,
Theyagaraya Nagar,
Chennai – 600 017.

... Petitioner

Vs.

1.The Presiding Officer,
1st Additional Labour Court,
Chennai.

2.H.Uma Maheswari

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the award passed by the first respondent herein made in I.D.No.177 of 2007 dated 30.07.2009 and quash the same.

For Petitioner : Mr.R.Parthiban

For R1 : Court

For R2 : Mr.B.Haribabu



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ORDER

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This Writ Petition is filed to call for the records of the award passed by the first respondent herein made in I.D.No.177 of 2007 dated 30.07.2009 and quash the same. The said dispute was raised by the second respondent challenging her illegal termination.

2.The petitioner will be referred to as Management and the 2nd respondent as workman.

3.The summary of the facts leading to the writ petition are as follows:

The workman was appointed on 15.12.2000 as a Personal Assistant to the Manager. The workman was troubled by the Manager who denied employment to her without assigning any reason. The workman was terminated orally without any notice. The workman therefore issued a Lawyer's notice on 23.01.2006 requesting the Management to reinstate her in service. The Management in reply requested the workman to report for duty. When the workman reported for duty she was refused employment by the



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Labour Officer and so she sent a lawyer's notice. Aggrieved by the illegal termination of her service, the workman raised the dispute. The Management filed a detailed counter stating that the dispute was not maintainable as the workman was neither discharged nor dismissed or terminated from service. According to the Management, the workman had absented unauthorisedly without any prior permission. According to the Management, the workman was in the habit of absenting from work without permission and so her name was deleted from the attendance register. It was stated that to the workman's notice dated 23.01.2006, a detailed reply dated 28.02.2006 was sent calling upon her to join duty, but she never reported for duty. Instead she raised the dispute. The Management denied that the workman was ever troubled by it while she was in service. The Management further stated that it had consistently offered employment to the workman right from the reply to the lawyer's notice as also the conciliation proceedings, but she failed to join duty and therefore there were no merits in the Industrial Dispute.

4.Before the Labour Court, the petitioner examined herself as W.W.1 and marked Ex.W1 to Ex.W9. One witness was examined on the side of the respondent as M.W.1 and Ex.M1 to Ex.M5 were marked. The Labour Court



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on an appreciation of the entire evidence on record found that when the workman reported for duty on 22.03.2006 she was denied employment, and that the workman's services were terminated without any notice, enquiry and compensation. The Labour Court therefore awarded compensation of Rs.1,20,000/- in lieu of the reinstatement. Aggrieved by the award passed by the Labour Court, the Management has filed the above writ petition.

5.The learned counsel appearing for the Management submitted that the Labour Court failed to note that though the Management was ready and willing to provide employment to the workman, she was not willing to join service and so she was not entitled to any relief. The learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of ***Creative Garments Ltd. Vs. Kashiram Verma*** reported in ***2023 SCC Online SC 277*** and the Judgment of the Bombay High Court in the case of ***Suja Agencies Vs. Uday Singh B. Rawat and another*** reported in ***2003 (4) LLN 1218*** and the Judgment of this Court in the case of ***Management of RAS Theatre Vs. The Presiding Officer, Labour Court, Salem and another*** reported in ***2004 (2) LLN 1067***.



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6.The learned counsel for the workman submitted that the Award of the Labour Court was based on evidence and hence did not call for any interference.

7.I have heard both the learned counsels and I have perused the records.

8.It is seen that to the Advocate's Notice dated 23.01.2006 of the workman, the Management sent a detailed reply on 28.02.2006 calling upon her to join duty. The workman instead of joining duty raised the Industrial Dispute stating that she was illegally terminated from service. It is further seen that even in the counter to the claim petition the management reiterated that it was ready and willing to provide employment to the workman, if she was ready to work in their office.

9.The Labour Court disbelieved the statement of the Management that it had requested the workman to join duty and that she had failed to report for duty. The Labour Court did not approach the issue from the point of offer of employment by the Management and refusal by the workman. Assuming



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that the workman was denied employment on 22.03.2006, the subsequent event's show that right from the counter, conciliation proceedings to this Court, the Management has offered to take back the workman and it is she who has refused to join. Even at the time of hearing of the writ petition on 19.12.2023, the workman's counsel sought time to get instruction on the offer made by the Management to take the workman back into service. This Court therefore posted the matter today under the caption “for orders”. Today, the learned counsel for the workman submitted that the workman got married and settled down and therefore due to personal inconvenience she was not willing to take the offer. In this regard it would be relevant to refer to the Judgment of this Court in the case of ***Management of RAS Theatre Vs. The Presiding Officer, Labour Court, Salem and another*** reported in ***2004 (2) LLN 1067***. The relevant paragraph is held as follows:

“8.The above stated facts will clearly disclose that in spite of the repeated offers before the Conciliation Officer and before the Labour Court and this Court, directing the petitioner to come and join duty, the employee had deliberately refrained from joining duty and has not accepted the offer of the



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management.

9.The attitude of the employee cannot at all be appreciated. He cannot claim any right over particular post. As long as the pay, allowances and other conditions of service are not affected, it is always open to the management to assign any work or to transfer the employee from one post to the other. Such an offer has been made by the management from the beginning. Apparently, the employee seeks to obtain unfair gain of back-wages without even working. The provisions of I.D. Act are not intended for such exploitation in an unfair manner.”

10.It would also be relevant to refer to the Judgment of the Hon'ble Supreme Court in the case of ***Creative Garments Ltd. Vs. Kashiram Verma*** reported in ***2023 SCC Online SC 277***, the Hon'ble Supreme Court held as follows:

“8.Considering the aforesaid factual matrix, in our opinion the award of the Labour Court granting back-



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wages and continuity in service to the respondent workman deserves to be set aside as he has not reported for duty despite the statement made by his counsel in Court on 30.10.2007. The present appeal cannot be kept pending as the conduct of the respondent itself establishes that he is no more interested in employment what to talk of back-wages.”

11.It is pertinent to note here even before the Labour Court, the petitioner abandoned the claim for reinstatement and backwages and instead prayed for compensation. It is therefore clear that the petitioner is not interested in working, whereas she is interested in getting monetary benefits that to without rendering service. Therefore, on the facts of the case and in the light of the aforesaid Judgment of this Court in the case of ***Management of RAS Theatre Vs. The Presiding Officer, Labour Court, Salem and another*** reported in ***2004 (2) LLN 1067***, and the Hon'ble Supreme Court in ***Creative Garments Ltd. Vs. Kashiram Verma*** reported in ***2023 SCC Online SC 277***, I find that the award of the Labour Court is unsustainable and therefore the same is set aside.



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12. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

The Presiding Officer,
1st Additional Labour Court,
Chennai.



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N.MALA, J.

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